

SECOND DIVISION

[G.R. No. 123026, September 04, 1996]

**JAIME R. RODRIGUEZ, PETITIONER VS. COURT OF APPEALS, AND
APOLINARIO SANCHEZ, RESPONDENTS.**

DECISION

MENDOZA, J.:

In a decision rendered April 30, 1976, the Court of First Instance of Bulacan, Branch IV ordered Genoveva Laxamana, predecessor in-interest of private respondent, to pay petitioner the sum of P7,500.00 with interest and attorney's fees in the amount of P1,500.00. By October 13, 1977, the decision had become final and executory without the judgment against Laxamana being satisfied. Consequently, property belonging to her and registered in her name under TCT No. T-122794 was sold at a public auction, at which petitioner was the highest bidder. A final deed of sale was issued in the name of petitioner on March 1, 1982 and title was consolidated in him. On November 17, 1986, a transfer certificate of title, TCT No. T-305937, was issued in the name of petitioner.

The records show that on July 8, 1983, the trial court issued an order granting a motion for execution earlier filed on February 14, 1979 by petitioner.

On August 29, 1988, on motion of petitioner, the court issued a writ of possession.

On September 23, 1988, private respondent Apolinario Sanchez filed a third-party claim, alleging that Genoveva Laxamana had sold the land to him on March 30, 1982. But the court dismissed private respondent's claim and, on December 14, 1989, issued a writ of demolition against him. Private respondent filed a petition for certiorari in the Court of Appeals but his petition was likewise dismissed. (CA-G.R. No. 23406)

On September 8, 1991, private respondent filed a complaint for the annulment of the sale to petitioner and obtained a writ of preliminary injunction from Branch 22 of the RTC of Bulacan, which, however, was eventually set aside by the appellate court in another case (CA-G.R. SP No. 30225).

On August 19, 1994, petitioner filed a motion for the issuance of an alias writ of demolition, which the trial court granted on October 10, 1994. On June 24, 1995, he moved for the issuance of a second alias writ of demolition which was also granted by the court on July 10, 1995.

For the third time, private respondent filed a petition for certiorari in the Court of Appeals. This time he was successful, as the appellate court, in a decision of the Seventeenth Division^[1] rendered on October 26, 1995, ruled that the writ of execution issued by the trial court on July 8, 1983 and the writ of possession issued

on August 29, 1988, as well as the writs of demolition issued on December 14, 1989, October 10, 1994 and July 10, 1995 were void because the five-year period within which the decision of the RTC could be executed by motion expired on October 13, 1982. Consequently, it was held, the sale of the property at public auction on April 30, 1979 was likewise void for lack of an order for such sale. The dispositive portion of said decision reads as follows:

WHEREFORE, foregoing considered, the petition is hereby GRANTED. The levy, the sale of the subject property, the orders of the public respondent dated July 8, 1983, August 29, 1988, December 14, 1989, August 29, 1994^[2] and July 10, 1995 are hereby declared NULL and VOID and are set aside.

A motion for reconsideration filed by petitioner was denied on the ground that it did not state the material dates showing that it was timely filed. Hence this petition.

Petitioner contends that, contrary to the decision of the Court of Appeals, there was an order dated February 23, 1979 issued by the RTC of Bulacan for the sale of the property; that the levy and sale were made within the five-year period provided in Rule 39, §6 of the Rules of Court; that the motions and orders made after five years, i.e., the writs of possession and demolition, were only ancillary processes to carry out the order previously made by the court for the execution of the decision of April 30, 1976; and that the case filed by petitioner in the Court of Appeals was barred by res judicata in view of the previous decisions of that Court in CA-G.R. SP Nos. 23406 and 30225.

We find merit in the petition.

First. The appellate court erred in believing that although a motion for issuance of an alias writ of execution had been filed by petitioner on February 14, 1979, i.e., within five years of the decision of the trial court, the motion was not granted by the court until July 8, 1983. Hence, the auction sale earlier held on April 30, 1979 was null and void. This is not so. Petitioner's motion for execution was granted in an order of the trial court dated February 23, 1979. By virtue of that order, the sale of the property was held on April 30, 1979. What private respondent and the Court of Appeals thought were orders of execution issued post facto, i.e., after the five-year period for execution expired on October 13, 1982, were merely orders to implement the order of execution previously issued on February 23, 1979.

Indeed, as petitioner points out, execution of the decision of April 30, 1976 began with the levy made on March 7, 1979 and its inscription on March 8, 1979. The notice of the sale was published in the March 29-April 4, 1979 issue of the *Tribune*. Afterwards, the sale was conducted on April 30, 1979 and inscribed on August 22, 1979. The redemption period expired on August 22, 1980, without redemption being made. All these could not have been based on the July 8, 1983 order because the sheriff had issued earlier, on March 1, 1982, the final deed of sale.

Indeed, the notice of levy stated that it was being made pursuant to the order of execution issued by the court, presided over by Judge Oscar C. Fernandez, on February 23, 1979. Unfortunately, the order cannot be found in the records of this case and this is the reason the order of July 8, 1983 erroneously stated that in making the order the court was acting on the motion filed by petitioner on February